27 February 2004

Original: English

Ad Hoc Committee on Jurisdictional Immunities of States and Their Property
1-5 March 2004

Draft articles on jurisdictional immunities of States and their property

Suggestions of the Chairman

Preamble

The States Parties to the present Convention,

Considering that the jurisdictional immunity of States is generally accepted as a principle of customary international law,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of the universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with private persons,

Taking into account the developments in State practice with regard to the jurisdictional immunities of States and their property,

Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

[*Recognizing* the general understanding that the provisions of the present Convention do not cover criminal proceedings,]

Have agreed as follows:

04-25329 (E)

Final clauses

Article A
Annex

...

Article B
Other international agreements

Nothing in the present Convention shall affect existing or future international agreements in special fields or of a regional or subregional nature which relate to matters dealt with in the present Convention.

Article C
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature or ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article D
Signature

The present Convention shall be open for signature by all States until [ ], at the United Nations Headquarters, New York.

Article E
Ratification, acceptance, approval or accession

The present Convention is subject to ratification, acceptance, approval or accession. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article F
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the [thirtieth] instrument of ratification, acceptance or approval or accession with the Secretary-General of the United Nations. The Convention shall apply only to proceedings introduced after its entry into force.

2. For each State ratifying, accepting or approving, or acceding to, the present Convention after the deposit of the [thirtieth] instrument of ratification, acceptance or approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance or approval or accession. In such a case, the Convention shall apply only to proceedings introduced after it has entered into force with respect to that State.

Article G
Denunciation

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to proceedings introduced before the date on which the denunciation takes effect, and to judgements given in such proceedings.

Article H
Depositary and notifications

1. The Secretary-General of the United Nations is designated the depositary of this Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States which have signed this Convention or acceded to it of the following:

(a) Signatures of the present Convention and of the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles E and H;

(b) The date on which the present Convention will enter into force, in accordance with article F;

(c) Any acts, notifications or communications relating to the present Convention.

Article I
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.

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Article A
Annex

Alternative 1

The annex to the present Convention forms an integral part of the Convention, and a reference to this Convention includes a reference to the annex.

Alternative 2

Articles 10, 11, 13, 14, 17 and 18 of the present Convention shall be interpreted and applied in accordance with the annex to the present Convention.

04-25335 (E)

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Dispute settlement provisions

Proposal by Guatemala

Article XX

If a dispute concerning the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article YY

1. If the dispute is not resolved within six months of the date on which the request referred to in article XX has been made, any party to the dispute may submit it to arbitration. The arbitration shall, unless the parties to the dispute agree otherwise, be in accordance with the procedure laid down in the annex to the present Convention.

2. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, or if the arbitral tribunal does not, as provided in paragraph 1 of article 14 of the annex, render its final decision within ten months, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.

3. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraphs 1 and 2 of this article, or by paragraph 2 thereof. The other States Parties shall not be bound by the paragraphs or paragraph that are the object of the reservation with respect to the State Party that has made it.

4. Any State Party which has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

04-25341 (E)

Annex

Arbitration

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article XX of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article XX of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of the Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure, assuring to each party to the dispute a full opportunity to be heard and to present its case.

Article 7

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(*a*) Provide it with all relevant documents, information and facilities; and

(*b*) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the arbitral tribunal.

Article 11

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions on both procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The arbitral tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.